

1995

**PETER GILBERT FOSS BA., LL.B, MLC**

**EXECUTIVE DIRECTOR OF THE DEPARTMENT OF  
CONSERVATION AND LAND MANAGEMENT**

**GWALIA CONSOLIDATED LIMITED**

**GWALIA MINERALS NL**

**AND**

**KEMERTON SILICA SAND PTY LTD**

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**D E E D**

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**CONVEYANCER  
CROWN SOLICITOR'S OFFICE  
PERTH**

**TELEPHONE : (09) 264 1711**

**CSO : 695/95**

Section 119 Stamp Act, 1921  
EXEMPT from W.A. Stamp Duty

*Neil Tall*

for Commissioner of State Revenue

THIS DEED is made the

10<sup>th</sup>

day of

*July*

1995

BETWEEN:

**PETER GILBERT FOSS B.A., LL.B, MLC**, in his capacity as the Minister for the Environment of the State of Western Australia ("Minister")

**EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CONSERVATION AND LAND MANAGEMENT**, a body corporate pursuant to the provisions of the Conservation and Land Management Act 1984 of Hackett Drive, Crawley, Western Australia ("Executive Director")

**GWALIA CONSOLIDATED LIMITED (A.C.N. 009 131 971) of 16 Parliament Place, West Perth, Western Australia ("Gwalia Consolidated")**

**GWALIA MINERALS NL (A.C.N. 009 011 947) of 16 Parliament Place, West Perth, Western Australia ("Gwalia Minerals")**

AND

**KEMERTON SILICA SAND PTY LTD (A.C.N. 067 603 552) of 16 Parliament Place, West Perth, Western Australia ("KSS")**

WHEREAS

- A. KSS proposes to establish a silica sand mining and processing operation ("Project") on 1,620ha of freehold land contained in Certificates of Title Volume 1842 Folio 350 and Volume 1830 Folio 340 north of the Kemerton Industrial Area ("Land", more particularly delineated on the plan attached and marked Annexure "A") in accordance with the terms of a Public Environmental Review by Gwalia Consolidated dated July 1993 as amended by the Amended Summary of Environmental Commitments submitted by Gwalia Consolidated dated November 1993 (collectively called "PER").
- B. KSS holds an option to purchase the Land ("Option"), which will be exercised by KSS when KSS has obtained all necessary approvals, including the approval of the Minister, to the Project and made a decision to proceed with the Project.
- C. By a letter dated 5 October 1994, as amended by a further letter dated 26 October 1994, the Minister approved the implementation of the Project conditional upon the parties entering into an agreement whereby the proponent agreed to vest certain parts of the Land.

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Transfer Stamped  
25/6/99  
*me*

- D. KSS is prepared when required by the Executive Director to do so to vest such parts of the Land in the Executive Director or as the Executive Director directs provided that KSS remains the owner of all minerals presently comprised in the title to the land to be vested.
- E. The parties wish to enter into this Deed in satisfaction of the condition referred to at Recital C above and to make provision for the management of the Land to be vested as a nature reserve or a conservation park under the Conservation and Land Management Act 1984 prior to and after any vesting of the Land.

NOW IT IS AGREED AND THIS DEED RECORDS as follows -

1. **CONDITIONS**

- 1.1 This Deed is conditional upon KSS acquiring and exercising the Option and becoming the registered proprietor of the Land.
- 1.2 For the purposes of this Deed the date on which KSS becomes the registered proprietor of the Land is the "Operative Date".
- 1.3 Unless the condition mentioned in Clause 1.1 is satisfied (or waived by mutual agreement of the parties) on or before 31 December 1995 or such later date as may be agreed, then this Deed will be at an end.
- 1.4 Gwalia Consolidated, Gwalia Minerals and KSS acknowledge that if this Deed comes to an end under Clause 1.3, the condition referred to in Recital C will not have been satisfied.

2. **STAGE 1 LAND**

- 2.1 Subject to Clause 1, KSS will -
- (a) as soon as practicable after the Operative Date cause that part of the Land delineated on the plan set out as Annexure 'B' ("the Stage 1 Land") to be surveyed and subdivided from the balance of the Land;
  - (b) immediately following the survey and subdivision make application pursuant to Section 71 of the Transfer of Land Act 1893-1972 for the grant to -
    - (i) KSS of a title in respect of all minerals (other than gold, silver and precious metals) on or under the Stage 1 Land ("Minerals Title"); and
    - (ii) KSS of a title to the balance of the Stage 1 Land ("Freehold Title").

(c) if and when requested by the Executive Director transfer the Freehold Title to or as directed by the Executive Director without monetary consideration and free of all encumbrances including caveats.

2.2 KSS will pay for all costs of survey and sub-division mentioned in Clause 2.1(a), making application for the grant of the titles mentioned at Clause 2.1(b) and transferring the Freehold Title pursuant to Clause 2.1(c). Stamp duty, if any, payable in respect of the transfer of the Freehold Title will be paid by the Executive Director.

2.3 The parties acknowledge that unless and until title to the Stage 1 Land is transferred pursuant to Clause 2.1(c), this Deed constitutes an agreement under and for the purposes of section 16 of the Conservation and Land Management Act 1984, ("the CALM Act").

2.4 If the Executive Director has not directed the transfer of the Freehold Title pursuant to clause 2.1(c) before the expiration of 42 years from the Operative Date then unless otherwise agreed by the parties this Deed shall be extended for a further period of 42 years.

### 3. **STAGE 2 LAND**

3.1 Upon completion of mining by KSS of that part of the Land known as the "Stage 2 Land", delineated on the plan set out as Annexure "B" ("Stage 2 Land"), KSS if and when requested by the Executive Director will or will cause the Stage 2 Land to be transferred to or as directed by the Executive Director for no monetary consideration and free of all encumbrances including caveats.

3.2 The Stage 2 Land must be rehabilitated by KSS in accordance with the PER upon completion of mining by KSS.

3.3 A transfer of the Stage 2 Land pursuant to Clause 3.1 prior to completion of rehabilitation shall not be construed as a waiver of the obligation of KSS to rehabilitate that land.

3.4 The provisions of Clauses 2, 4, 5, 6 and 8 will apply mutatis mutandis in respect of the Stage 2 Land.

### 4. **MANAGEMENT**

4.1 On and from the Operative Date until title to the Stage 1 Land is transferred pursuant to Clause 2.1(c), the Stage 1 Land is to be managed by the Department (as defined in the CALM Act) as either a nature reserve or conservation park under that Act as may be determined by the Executive Director.

4.2 The Executive Director is entitled to and shall be granted possession of the Stage 1 Land on and from the Operative Date.

- 4.3 Without derogating from the management responsibilities of the Executive Director, the Department and the National Parks and Nature Conservation Authority under the CALM Act in relation to nature reserves and conservation parks the Executive Director and KSS will establish a management committee to develop policy suggestions for the management of the Stage 1 Land and otherwise to proffer advice and suggestions in relation to the management of the Stage 1 Land.
- 4.4 The Executive Director and KSS will agree the procedures for the operation of the Management Committee mentioned at Clause 4.4.
- 4.5 As between KSS and the Executive Director all costs incurred in the management of the Stage 1 Land will be borne by the Executive Director.

5. **OWNERSHIP OF MINERALS**

- 5.1 The Minister and the Executive Director acknowledge that -
- (a) as the Land was alienated from the Crown before 1 January 1899, the registered proprietor of the Land owns all minerals on or below the surface of the Land (other than gold, silver and precious metals);
  - (b) KSS is the grantee of an option to purchase the Land which option KSS intends to exercise.
  - (c) Upon becoming registered as the proprietor of the Land KSS will own all minerals on or below the surface of the Land (other than gold, silver and precious metals).
  - (d) it is of fundamental importance for the Project, that no party other than KSS be granted any right, title or interest to explore and mine for minerals on or below the surface of the Stage 1 Land.
- 5.2 Subject to Clause 6, the Executive Director to the extent to which is within his power to do so will not permit any exploration or mining to be undertaken on the Stage 1 Land and will object to any application for a mining tenement made by a third party at any time in respect of the Stage 1 Land.
- 5.3 The obligations of the Executive Director under Clause 5.2 are subject to any statutory duties to which the Executive Director is subject, and nothing in that clause is to be construed as requiring the Executive Director to act in any way which would be contrary to the proper discharge and performance of those duties.

6. **MINING ON STAGE 1 LAND**

- 6.1 If at any time the Executive Director, having the power to do so, grants any right to explore and/or mine the Stage 1 Land, then as between KSS and the Executive Director KSS will have an exclusive right of first refusal to

undertake the same upon such terms and conditions as may be agreed between KSS and the Executive Director.

- 6.2 KSS cannot exercise any rights arising under the Mineral Title to explore or mine for minerals on the Stage 1 Land except with the approval of the Executive Director, to be granted or withheld in his unfettered discretion and notwithstanding KSS may have obtained all or any other consents approvals or licenses necessary to do so.

7. **PROJECT APPROVAL**

Subject to Clause 1.4 the Minister hereby acknowledges that this Deed satisfies the condition mentioned in Recital C and, accordingly, KSS may now implement the Project in accordance with the PER.

8. **DEALING WITH STAGE 1 LAND**

- 8.1 Except to enhance or further the use and status of the Stage 1 Land as a nature reserve or conservation park the Executive Director subject to Clause 8.2 may not transfer, assign, encumber or otherwise deal with the Stage 1 Land nor seek to change the freehold status or consent to any resumption of the Stage 1 Land without the prior written approval of KSS which may not unreasonably be withheld.

- 8.2 If the Executive Director decides at any time that all or any part of the Stage 1 Land is no longer required for conservation purposes and should be sold, then the Executive Director subject to any statutory requirements and to it being within the authority of and statutorily permissible for the Executive Director to do so will first offer it in writing to KSS. KSS may accept that offer by giving written notice to the Executive Director within thirty (30) days of its receipt. If KSS determines to accept the offer, then the purchase price shall be \$1.00 and the land will be transferred to KSS as soon as possible after the date of KSS' notice.

9. **CAVEATS**

- 9.1 Subject to Clause 9.2 KSS may lodge a caveat against the Freehold Title to protect its rights under this Deed and subject to that clause the Executive Director will not seek to have that caveat removed during the term of this Deed.

- 9.2 KSS must withdraw any caveat if the effect of the caveat is to prevent the Stage 1 Land being dealt with in a way contemplated by the exception in Clause 8.1 subject to the right of KSS to re-lodge a caveat upon completion of such dealing.

10. **ASSIGNMENT**

- 10.1 KSS may assign its rights under this Deed provided that the assignee first enters into a Deed with the Minister and the Executive Director reasonably

satisfactory to each of them covenanting to observe and perform the obligations of KSS under this Deed.

- 10.2 KSS may not transfer or otherwise dispose of all or any part of the Mineral Title except pursuant to Clause 3.1 or to an assignee who has entered into a deed of covenant as required by Clause 10.1.

11. **INDEMNITY**

For so long as KSS retains legal title to the Freehold Land the Executive Director will indemnify and keep indemnified KSS and its employees and agents (together called "the Indemnities") from and against all losses, liabilities, claims and expenses arising, whether at common law or under any statute relating to Workers' Compensation or Employers' Liability, from any injury to or death of any person and damage to or destruction of any property of the Indemnities caused directly or indirectly by the ownership of the Freehold Title or the management of the Stage 1 Land except where and to the extent such injury, death, damage or destruction is the result of or contributed to by the negligence or wilful default of the Indemnities.

12. **ENTIRE DEED**

This Deed constitutes the entire agreement between the parties with respect to the subject matter hereof and contains all of the representations, warranties, covenants and agreements of such parties.

13. **NOTICES**

- 13.1 Any notice, demand, request or other communication (collectively or individually "Notice") required to be given or made hereunder shall, unless otherwise expressly provided, be in writing and be deemed duly given or made if executed by the party giving or making the same (or signed on behalf of such party) by any duly authorised representative thereof) and delivered or sent by prepaid registered first class mail, by telex, telegram or cable or by telecopier or other facsimile communication as follows -

Minister for the Environment

12th Floor  
Dumas House  
2 Havelock Street  
WEST PERTH WA 6005  
Fax No : 322 5149

The Executive Director of the  
Department of Conservation and  
Land Management  
Hackett Drive  
CRAWLEY WA 6009  
Fax No : 386 7112

Kemerton Silica Sand Pty Ltd  
16 Parliament Place  
WEST PERTH WA 6005  
Fax No : 481 1271

- 13.2 Any party may change its or their address for the purpose of this Agreement by giving notice of such change to the others of them pursuant to the provisions of Clause 13.1.
- 13.3 Any Notice sent by mail shall, subject to proof of mailing, be deemed to have been received by the party to whom it was sent at the time when the envelope or wrapper containing the same in the ordinary course of post would have reached such address and notwithstanding that it may never do so. Any Notice sent by telegram or cable shall be deemed to have been received by the party to whom it was sent at the time at which the records of the person delivering the same indicate that it was so delivered. Any Notice sent by telex or telecopier or other facsimile communication shall be deemed, in the absence of proof to the contrary, to have been received by the party to whom it was sent on the date of dispatch provided that -
- (a) the recipient's answer back code appears on the sender's copy of the telex or telecopy or other facsimile communication (as the case may be); and
  - (b) if the time of dispatch is not before 4.00pm (local time) on a day on which business generally is carried on in the place to which such telex, telecopy or facsimile communication is sent, it shall be deemed to have been received at the commencement of business on the next such day in that place.
- 13.4 Any Notice required to be made or given hereunder may be signed by an officer of the party giving or making the same. No recipient shall be concerned to enquire as to the authority of the officer so signing.

14. **VARIATION**

No modification, variation or amendment of this Deed shall be of any force or effect unless it is in writing and signed by the parties. Unless the context otherwise so requires, a reference to this Deed shall include a reference to this Deed as modified, varied or amended from time to time.

15. **FOLLOW REMEDIES**

All remedies, rights, undertakings, obligations or agreements of the parties arising by law, this Deed or otherwise shall be cumulative and none thereof shall be in limitation of any other right, remedy, undertaking, obligation or agreement of such party. Each party may follow any remedy to which such party is entitled by law, this Deed or otherwise concurrently or successively at that party's option.



16. **COSTS**

Each party shall pay its own costs in relation to the preparation and execution of this Deed but the Executive Director will pay any stamp duty assessed in respect of this Deed.

17. **FURTHER ACTS**

The parties shall execute and do all such acts and things as shall be necessary or desirable in order to implement and give full effect to the provisions and purposes of this Deed.

18. **HEADINGS**

The clause headings in this Deed have been inserted for the purpose of reference only and shall have no effect whatsoever on the meaning, interpretation or construction of the provisions hereof.

19. **WAIVER**


No waiver of any provision of this Deed nor consent to any departure therefrom, by any of the parties shall be effective unless the same shall be in writing and then such waiver or consent shall be effective only in the specified instance and for the purpose for which it is given. No default or delay on the part of any of the parties in exercising any rights, powers or privileges hereunder shall operate as a waiver thereof or of any other right hereunder; nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

20. **REFERENCE TO STATUTES**

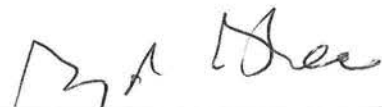
Each reference in this Deed to an Act of Parliament, regulation or ordinance, or to any section or provision thereof, shall be read as though the words "or any statutory modification or re-enactment thereof or any statutory provision substituted therefor, and regulations, ordinances, by-laws and other statutory instruments promulgated or issued thereunder" were added to such reference in this Deed to an Act of Parliament in the State of Western Australia.


SIGNED by the **HONOURABLE** )  
**PETER GILBERT FOSS, B.A.,** )  
LL.B., MLC in the presence of:- )

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
The Honourable Peter Gilbert Foss  
B.A., LL.B., MLC

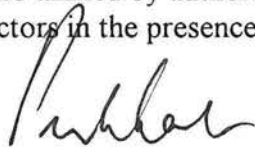
THE COMMON SEAL of the )  
EXECUTIVE DIRECTOR OF )  
THE DEPARTMENT OF )  
CONSERVATION AND LAND )  
MANAGEMENT was hereunto )  
affixed by the Executive Director )  
in the presence of:- )

  
\_\_\_\_\_  
Executive Director

  
\_\_\_\_\_  
Witness

THE COMMON SEAL of )  
GVALIA CONSOLIDATED )  
LIMITED A.C.N. 009 131 971 )  
was hereunto affixed by authority )  
of the Directors in the presence )  
of:- )





  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Director/Secretary Chris Lalor  
Executive Director

THE COMMON SEAL of )  
GVALIA MINERALS NL )  
A.C.N. 009 011 947 was )  
hereunto affixed by authority of )  
the Directors in the presence of:- )

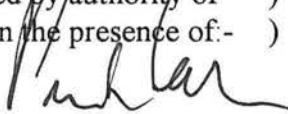



  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Director/Secretary Chris Lalor  
Executive Director

THE COMMON SEAL of )  
KEMERTON SILICA SAND )  
LTD (A.C.N. 067 603 552) was )  
hereunto affixed by authority of )  
the Directors in the presence of:- )



  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Director/Secretary

A

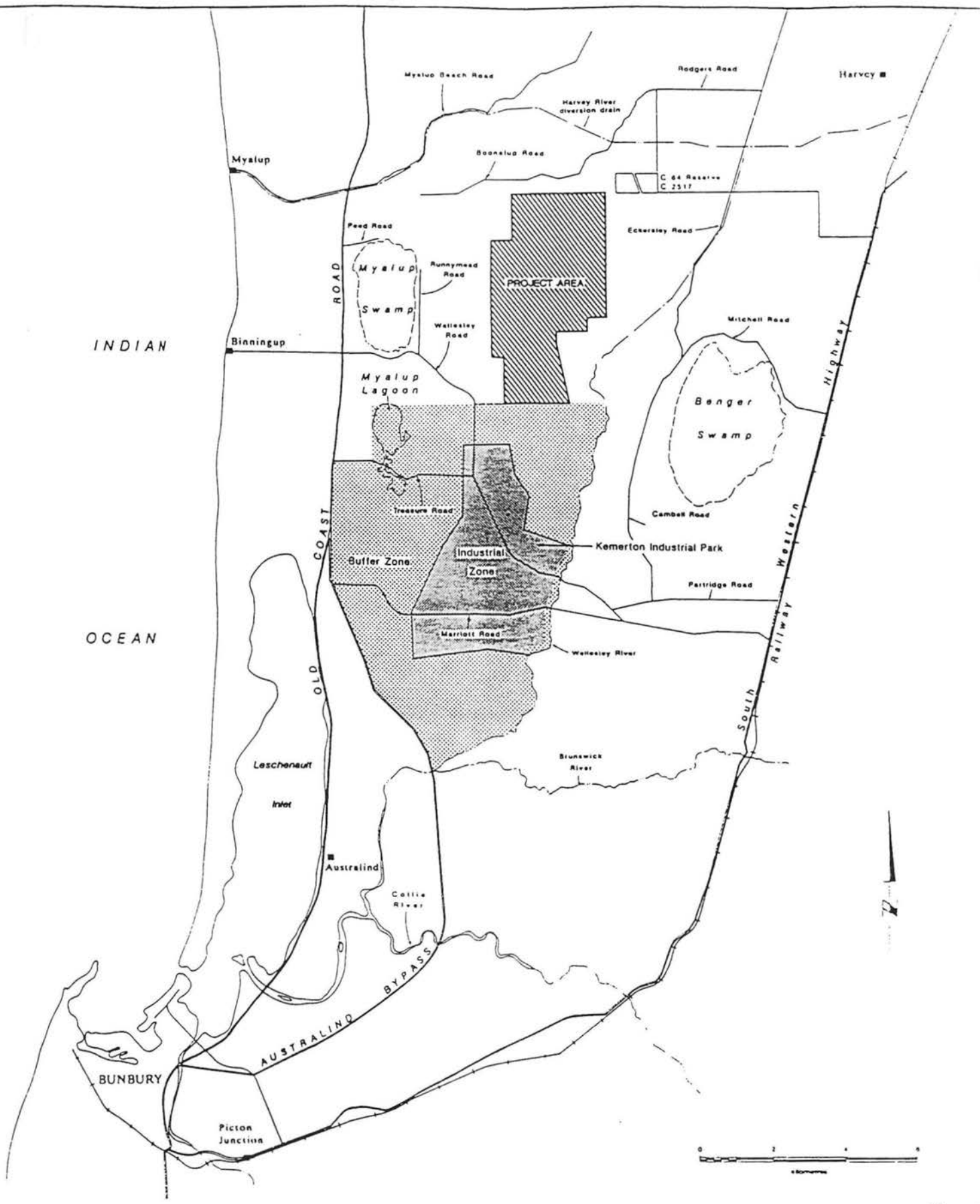


Figure 1

**GWALIA CONSOLIDATED LTD.**

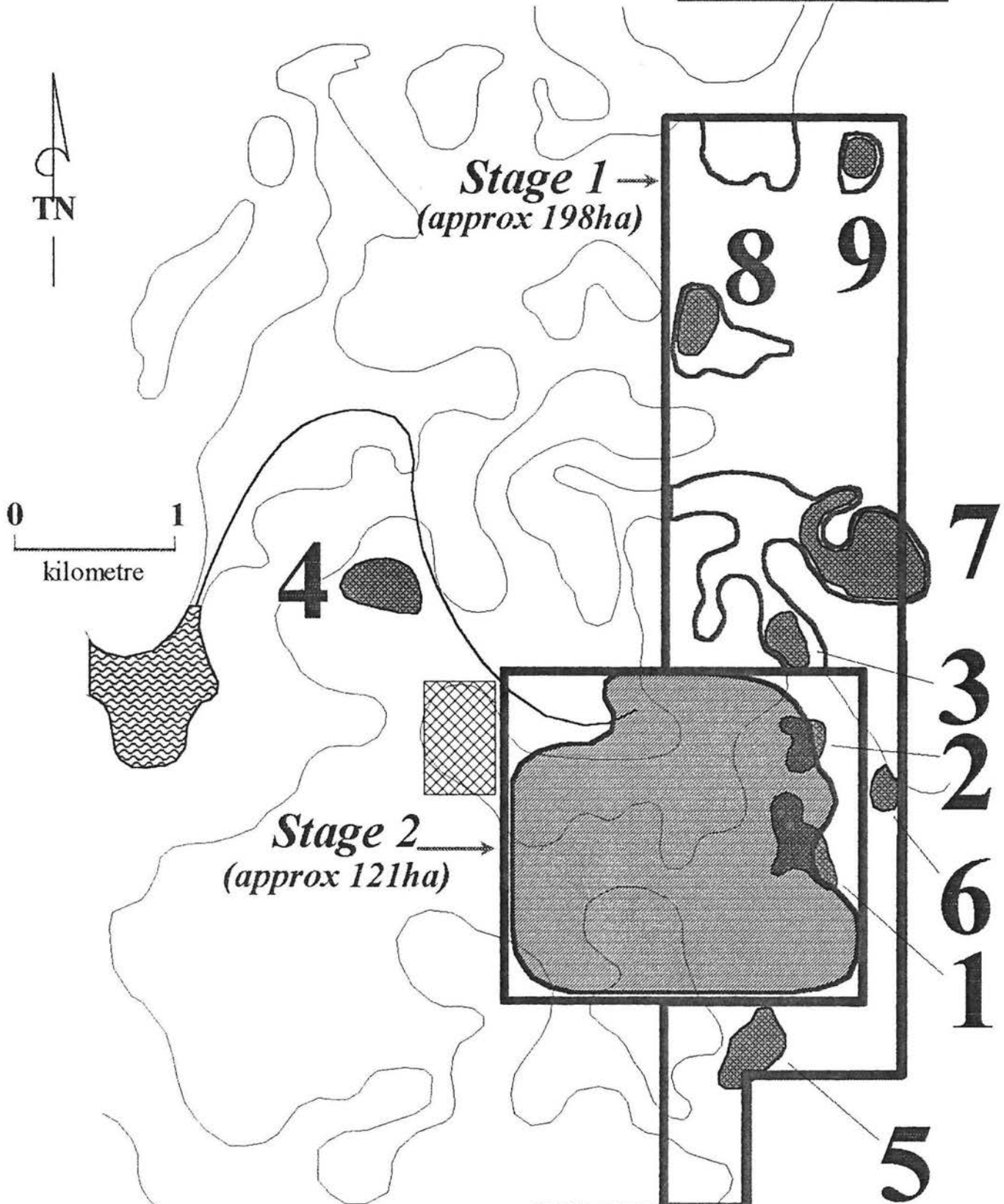
KEMERTON SILICA SANDS


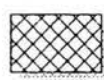

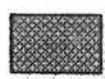


**PROJECT LOCATION PLAN**

SCALE	1:250 000 SHEET	DATED ON		1 APR 82	
COMPILED	T.M.	APR 82	LAST REVISION	T.F.M.	DEC 97
DRAWN	C.R.B.	APR 82	ORIGINAL HELD	PERTH	
CHECKED		DRAWING NUMBER 0221 / 2 / 001			



# KEMERTON SILICA SANDS PROJECT



- |  |               |   |            |  |                   |
|--|---------------|---|------------|--|-------------------|
|  | DREDGE POND   |  | PLANT SITE |  | RESIDUE POND      |
|  | EPP WET LANDS |  | DAMP LANDS |  | PROPERTY BOUNDARY |